

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4337 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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TRIMURTHI SAMUEL CHRISTIAN

Versus

MANAGING DIRECTOR

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Appearance:

MR RK MISHRA for Petitioners

MR DG CHAUHAN for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 23/12/96

ORAL JUDGEMENT

The petitioners seek a direction on the respondents to grant pay scale of Rs. 290-480 to the petitioners in the post of salesman in which they were working.

2. According to the petitioners, the petitioners Nos. 1 to 5 were recruited as mazdoors in the pay scale of Rs. 196-232 while petitioners Nos. 6 and 7 were

recruited as salesmen. The petitioners Nos. 1 to 3 were promoted as salesmen in November 1984, the petitioner No. 4 in December and the petitioner No. 5 in April, 1985. On their promotion they came to be placed in the pay scale of salesman which was Rs. 210-270. Thus, on the date of the petition all the petitioners were working as salesmen in the said pay scale of Rs. 210-270. According to the petitioners Chandrakant Thakore, Shashikant Jethalal Parmar, Narendra Kundanlal and Dinesh Bhatt who came to be promoted as salesmen from the post of mazdoors were placed in the pay scale of Rs. 260-400 and they came to be redesignated as junior clerks. It is contended that these persons were junior to the petitioners but they were placed in the higher scale of Rs. 260-400. It is further contended that other persons namely Vijay Chauhan, Suryakant Thakkar, Vinod Patel and Babubhai Prajapati who were appointed as salesmen and Ramabhai Patel, Induba and Ishwarbhai Darji who joined as mazdoors and were later promoted as salesmen were all given the pay scale of Rs. 260-400 later revised to Rs. 290-480. Thus, according to the petitioners they have been meted out discriminatory treatment inasmuch as they are not given the pay scale of Rs. 290-480 which is given to others who are appointed to the same post of salesmen.

3. It is contended on behalf of the petitioners by the learned counsel that the respondents have treated the petitioners with gross discrimination and they have been adopting pick and choose policy by giving special treatment of higher pay scale to some of the persons belonging to the same category as that of the petitioners. It was contended that the petitioners' fundamental right to equality guaranteed by Articles 14 and 16(1) of the Constitution has been flagrantly violated by the respondents. It was submitted that number of persons who are named in this petition and whose initial appointments were as mazdoors have been placed in the higher scale of Rs. 290-480 while the petitioners are retained in the scale of Rs. 210-270.

4. It transpires from the record that the petitioners Nos. 1 to 5 were initially recruited as mazdoors and they were promoted as salesmen in 1985 only. The petitioners Nos. 1,2,3 and 5 were promoted on 1.2.1985 while the petitioner No. 4 was promoted on 4.4.1985. They were all drawing the pay scale of Rs. 210-270 attached to the post of salesman. The petitioner No. 6 was appointed as salesman on 1.4.1979 while the petitioner No. 7 was appointed to that post on 1.5.1976. Thus, the senior most of the petitioners Mr. Ramanlal

Chhaganlal Jadeja came to be appointed as salesman on 1.5.1976. The facts which are brought on record in the affidavit-in-reply filed by the respondents clearly show that all the seven persons named by the petitioners in paragraph 3.6 of the petition, namely, Vijay Chauhan, Suryakant Thakkar, Vinod Patel, Babubhai Prajapati, Ramabhai Patel, Induba and Ishwarbhai Darji were appointed as salesmen initially in the pay scale of Rs. 210-270 but thereafter they came to be promoted as junior clerks which carried the pay scale of Rs. 260-400. Therefore, the case of these persons cannot be said to be similar to that of the petitioners. The post of junior clerk is entirely a different post from salesman's post and it carried the higher pay scale of Rs. 260-400. By circular dated 16.4.1985 these junior clerks were placed in the pay scale of Rs. 290-480. However, the petitioners who belonged to the cadre of salesman in the scale of Rs. 210-270 could never claim to be given the pay scale of Rs. 260-400 which was prescribed for the post of junior clerk which came to be revised to Rs. 290-480. It cannot be said that those who were taken up in the cadre of junior clerks carrying the higher pay scale remained comparable to the petitioners who continued to remain in the cadre of salesman in the pay scale of Rs. 210-270. There is, therefore, no question of any violation of the petitioners' right to equality in context of these persons.

4. As regards Yakub Patel and Mahendra Sukhdev who are referred to in para 3.8 of the petition it is brought on record that they were appointed as salesmen on 1.2.1973 in the pay scale of Rs. 210-270. Thus, even these two persons were far senior to the petitioners. These persons were working in marketing department. The respondents have denied the allegations made by the petitioners in context of these persons. As regards these persons and others named by the petitioners who were given the scale of Rs. 260-400, it is brought on record that they were appointed as junior clerks and therefore were not comparable to the petitioners. Shri Gopal R. Chara was appointed as a junior clerk as far back as on 27.8.1978. It is also pointed out that certain employees raised a dispute in the Industrial Tribunal (Reference (IT) No. 101 of 1983) regarding promotion and pursuant to the directions which were given by the Tribunal in that Reference they were absorbed in the pay scale of Rs. 260-400. Thus, those who were given the pay scale of Rs. 260-400 in the cadre of junior clerks which came to be revised upward to Rs. 260-400, were in no way comparable to the petitioners and it cannot be said that the petitioners were discriminated

against by virtue of their being continued in the scale of Rs. 210-270 which was the scale for the post of salesman held by them. All these particulars are given in the affidavit-in-reply and in the statements which are annexed with the reply at Annexures A to E and there is no reason to doubt them.

5. It was sought to be contended on the basis of the averments made by the petitioners in their affidavit-in-rejoinder to the effect that Chimanbhai Amrabhai, Madhubhai Maganbhai Parmar and Harish Panchkuvawala who were junior to the petitioners were given the pay scale of Rs. 290-480 though they were working as salesmen. There is absolutely no substance in this contention because if the orders at Annexure-B collectively to the affidavit-in-rejoinder passed in respect of these persons are perused, it becomes clear that while working as salesmen in the scale of Rs. 210-270 they were for some time given charge of higher post of supervisor which carried the pay scale of Rs. 290-480. In fact the orders show that the scale of Rs. 290-480 was the scale of supervisors and the petitioners therefore could never have claimed that higher scale. The ad-hoc arrangement was made of giving the charge to these persons from September 1985 for a period of six months beyond 12.9.1985 or until further orders whichever was earlier. There was therefore no question of giving those persons a higher pay scale of Rs. 290-480 in the cadre of salesmen which carried the pay scale of Rs. 210-270. They were only to remain in charge of the post of supervisor which carried the said higher pay scale for a limited time because of the exigencies of the situation. The contention raised on behalf of the petitioners that these three persons were given the higher pay scale of Rs. 290-480 in the post of salesman is therefore wholly misconceived and baseless.

6. Under the above circumstances, the petitioners have not made out any case for being granted the higher pay scale of Rs. 290-480 for the posts of salesmen which they held. The petition is therefore rejected. Rule is discharged with no order as to costs.

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